



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,388	08/22/2006	Joanne Lynsey Morgan	MORGAN-1 PCT	9005
25889	7590	08/04/2010		
COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576				
EXAMINER				
HALE, GLORIA M				
ART UNIT		PAPER NUMBER		
3765				
MAIL DATE		DELIVERY MODE		
08/04/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/584,388

**Applicant(s)**

MORGAN, JOANNE LYNSEY

**Examiner**

Gloria Hale

**Art Unit**

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10-25-10.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 11-22 and 24-37 is/are pending in the application.
- 4a) Of the above claim(s) 1, 11-18, 20-22 and 24-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19, 30 and 32-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 30 and 32-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 30, line 4 the terms "displaceable" and "deformable" are not structurally equivalent terms and it is not clear as to what structure applicant is attempting to claim with those functional terms that have different meanings. In claim 32, last line it is not clear as to what structure forms the non-slip manner.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 19, 30 and 32-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Croxall (US 2,734,193).

Croxall discloses a brassiere comprising two breast cups 12 wherein each cup includes one strip of stretchable material 31' comprising a loosely located inner strip 20 which is attached to one end to an upper part at 27 of the cup and attached at a lower end to said cup at 22 wherein said strip is adjustable in length at 31' and is adapted to

support at least one breast wherein each strip is diagonally mounted on said cup (from 34 to 21) extending from an upper attachment end 31' to said lower attachment end at 22 and configured to pull the breast upwardly and inwardly towards the cleavage in use. (See col. 1, line 39 to col. 2, line 25 and figure 1).

In regard to claims 30 and 32-37 Croxall discloses a breast support apparatus coupled to each cup and displaceable relative to the cup. A piece of stretchable material 31' and loosely located on the inner strip 20 attached to one end to the upper part at 27 of the cup and to an opposite lower end of the cup at 22. The piece is stretchable and adjustable (31') along its length relative to the breast cup and supports the breast as claimed as discussed above. The stretchable material 31' is formed in a sling and hold the breast as claimed. The sling is shaped inward to have curved ends and oppositely curved edges. The piece of stretchable material 31' is diagonally mounted or inclined on the cup and extends to the lower cup location which is adjacent to the cup bottom edge as claimed. (See col. 1, line 39 to col. 2, line 25 and figure 1).

#### Election/Restriction

Applicant's election with traverse of claims 1, 11-18, 20-22 and 24-29 in the reply filed on 3-25-10 is acknowledged. The traversal is on the ground(s) that the invention is related to a single invention named "clothing". This is not found persuasive because "clothing" is included in multiple classifications of class 2 and also class 450. AS indicated in the election/restriction applicant's application includes multiple embodiments that form different items of clothing that are classified in different classes.

The requirement is still deemed proper and is therefore made FINAL.

Claims 1,11-18, 20-22 and 24-29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to two nonelected inventions, there being no allowable generic or linking claim. This application contains claims 1,11-18, 20-22 and 24-29 drawn to two invention's nonelected with traverse in the reply filed on 3-25-10. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Mon.-Thurs.,...

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gloria Hale/  
Primary Examiner, Art Unit 3765

\*\*\*